

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6095**

**PETITION OF BRENDA AND WILLIAM BOYKINS**

(Hearing held November 9, 2005, Worksession held December 7, 2005)

**OPINION OF THE BOARD**

(Effective date of Opinion, February 15, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a), 59-C-1.323(b)(2) and 59-B. The petitioners propose the construction of a one-story addition that requires a variance of 11.70 feet as it is within 8.30 feet of the rear lot line; a one-story addition [Mississippi Avenue] that requires a variance of 2.50 feet as it is within 22.50 feet of the front lot line; and a deck that requires a variance of 3.50 feet as it is within 7.50 feet of the rear lot line. The required rear lot line setback for the one-story addition is twenty (20) feet, the required front lot line setback for the one-story addition [Mississippi Avenue] is twenty-five (25) feet; and the required rear lot line setback for the deck is eleven (11) feet.

Thomas Mammen, the petitioners' contractor, appeared with the petitioners at the public hearing.

The subject property is Lot 10, Block A, Sligo Park Hills Subdivision, located at 8000 Piney Branch Road, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01052351).

Decision of the Board: Requested variances **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose the construction of a 12.5 x 7.5 foot one-story addition within the western side yard; the construction of a 13.3 x 3.5 foot one-story addition within the southern front yard; and a 13.5 x 12.5 foot deck within the western side yard.
2. The petitioners testified that the size of the lots in their neighborhood varies and that their lot is one of the smallest lots in the area. The petitioners testified that their lot conforms to the minimum required lot size for the zone, but that the buildable envelope is very shallow and

measures 26.6 x 43.1 feet for a total of 1,149 square feet. The petitioners testified that only two other lots in their neighborhood are smaller than their lot. Mr. Mammen testified that the petitioners' lot is 6,165 square feet and that the existing structures represent a use of 18% of the total lot area. Mr. Mammen testified that the proposed structures will increase the use of the total lot area to 21%. See, Exhibit No. 9 [zoning vicinity map].

3. The petitioners testified that the subject property is a corner lot located at the intersection of Mississippi Avenue and Piney Branch Road and that the front of their house faces Piney Branch Road. The petitioners testified that after a State Highway Administration (SHA) improvement to Piney Branch Road, no parking was permitted on the road and that access to the road from their property was eliminated.

### **FINDINGS OF THE BOARD**

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioners' lot is one the smallest lots in their neighborhood, and additionally has a shallow buildable envelope of 26.6 feet in depth and 1,149 square feet in area. The Board finds that these are exceptional circumstances peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

*(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction a one-story addition (western side yard), a one-story addition (southern front yard), and a deck (western side yard) are the minimum reasonably necessary.

*(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances of 11.70 feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition, of 2.50 feet from the required twenty-five (25) foot front lot line setback for the construction of a one-story addition, and of 3.50 feet from the required eleven (11) foot rear lot line setback for the construction of a deck are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, the testimony of their witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 5(a) through 5(f) and 11(a) through 11(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Wendell M. Holloway, with Caryn L. Hines, in agreement, and with Donna L. Barron and Allison Ishihara Fultz, Chair, in opposition, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 15th day of February, 2006.

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Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.